

EXHIBIT AA

EXHIBIT 3
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SEALED

June 30, 2016

** CONFIDENTIAL **
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CISCO SYSTEMS, INC.,
Plaintiff,

v. No. 5:14-cv-05344-BLF

ARISTA NETWORKS, INC.,
Defendant.

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** CONFIDENTIAL **

VIDEOTAPED DEPOSITION OF JOHN R. BLACK, Ph.D.

THURSDAY, JUNE 30, 2016

SAN FRANCISCO, CALIFORNIA

DEBORAH MAYER, CSR 9654, RPR CRR CRP CLR

U.S. LEGAL SUPPORT - SAN FRANCISCO

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1 to do source code review for you in this case?

2 A. No.

3 Q. Did you review different versions of Arista's
4 EOS source code?

11:22 5 A. No. The only source code I've reviewed is the
6 one I have at home on my own computer, and I described
7 how I got a hold of it, it's version 4.15 something,
8 something. I do understand that there are other
9 versions in the past that Arista has published; I don't
11:22 10 have access to those. I think they may be on a computer
11 over at Kecker, but I have never spent time on that
12 computer.

13 Q. Did you ever ask anybody at Kecker to give you
14 access to that source code review computer?

11:23 15 A. No.

16 Q. Is there any reason why you didn't do that?

17 A. In forming my opinions, it never came to mind
18 that I would like to see older versions of EOS in order
19 to arrive at determinations that I have set forth in my
11:23 20 reports.

21 Q. So, fair to say that you felt confident that
22 you could review one version of EOS and still arrive at
23 accurate opinions in this case?

24 MR. WONG: Objection, vague.

11:23 25 A. As I said, all of my opinions are based on -- I

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1 mean, okay, stepping back, I don't offer any opinions
2 about source code copying, source code similarity. I
3 generally wanted to understand how the parser worked
4 primarily around issues around the '526, and that was
11:24 5 the majority of my investment in examining source code.
6 Had there been allegations of source code copying, I
7 absolutely would have wanted to see not only a present
8 version and all past versions, I would have wanted to
9 see similar past versions of Cisco's source code and its
11:24 10 various offerings and so forth. My opinions don't rely
11 in any way on needing to see an array of different past
12 releases of EOS source code.

13 BY MR. HOLMES:

14 Q. You do understand that Dr. Almeroth provided an
11:24 15 opinion that certain help descriptions were copied, and
16 he specifically cited to source code files and lines in
17 providing those opinions, correct?

18 A. I understand that Cisco has alleged help
19 description copying, and that was dropped on Arista on
11:25 20 May 27th, I think a week before I had to write my
21 Opening Report. I was aware of it almost immediately
22 through Arista's attorneys, and I complained there was
23 absolutely no way that I could consider the weight of
24 these allegations, given the extreme detail I went to
11:25 25 for these other asserted elements, nor did they ask me

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1 to try to make any sort of fully-considered opinion of
2 any kind.

3 I am aware that Dr. Almeroth has included in
4 his Opening Report and in his Rebuttal Report references
11:25 5 to source code and help descriptions, and he's made some
6 vague allegations. As I note in my reports, it was
7 hopeless for me to take into consideration the meaning
8 of these allegations, the merits of the evidence, most
9 of which isn't even available because we haven't done
11:26 10 depositions, we don't have discovery on this question, I
11 haven't had a chance to do any of the analysis that I've
12 done for things like command abstractions and so forth
13 on this question.

14 So yes, to answer your question, I'm aware that
11:26 15 he has included this in his reports. But to the extent
16 that I have not included it is because I think it's
17 basically a hopeless task to make any sort of
18 substantive opinion based on the lack of evidence that
19 we have.

11:26 20 Q. What more evidence would you need?

21 A. I would like to conduct an analysis analogous
22 to what I've done, let's say, for command abstractions.
23 So I would want to say, of these help descriptions, what
24 was the first date of their appearance? Who invented
11:26 25 them, purportedly invented them? Where did they come

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1 from? Did Arista have them first or did Cisco, or was
2 there some preexisting product that had them first?

3 I'd want to see deposition testimony that
4 answers these questions by the purported authors of
11:27 5 these help descriptions. I would want to do a
6 programmatic analysis to see if if there are common
7 expressions found elsewhere on the Web that pre-date
8 anyone else's use, Cisco or Arista.

9 So this is a thousand pages of report that I've
11:27 10 produced in a relatively short period of time comprising
11 a lot of analysis and citing to a lot of evidence. And
12 to almost a full extent, there is no analogous evidence
13 available to me on the question of help description
14 copying.

11:27 15 Q. Did you ever ask anyone at Arista if they
16 copied the help descriptions?

17 A. Absolutely not. I wouldn't have cause to ask
18 that to -- I don't talk to people at Arista.

19 Q. Did you ever ask Arista's lawyers to allow you
11:28 20 to talk to anybody at Arista to do that investigation?

21 A. No. When I learned about these allegations, it
22 was May 27th, and I had, as you might imagine, some
23 other things to pay attention to, given there were seven
24 days left in the drafting period.

11:28 25 Q. So if you assume with me that the allegation

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1 that Arista copied these help descriptions is true, and
2 I understand that you haven't provided an opinion about
3 that. But if you assume that it's true, wouldn't the
4 easiest source of evidence to verify whether or not
11:28 5 that's true is just to ask the engineers if they copied
6 it or not?

7 MR. WONG: Objection, incomplete hypothetical.

8 A. First of all, I'm uncomfortable making that
9 assumption. But I'll try my best to get myself in that
11:28 10 frame of mind.

11 There are allegations of copying on a various
12 number of elements here. It has never been my first
13 inclination to call up someone and say hey, did you copy
14 this? I think that testimony offered under oath in
11:29 15 depositions is something that should be considered. But
16 I also, as you can see from all the work I've done, also
17 wanted to do a more principled analysis to see levels of
18 overlap and so forth.

19 So no, it would not at all be my first
11:29 20 inclination to call the Arista lawyers and say hey,
21 could you give Cisco (sic) a ring and see if they just
22 outright say they copied this stuff. They may not even
23 know.

24 MR. WONG: I think you meant Arista in that
11:29 25 answer.

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1 come from you or somewhere else, where did you get it?
2 Was that you or somebody else who wrote that? I often
3 won't know the answer to these kinds of questions. It's
4 too much in your head. And you don't index your memory
11:31 5 in a way that would help you answer it.

6 If something extremely memorable happened when
7 you cut and pasted as a string from one window to
8 another, something like that, maybe you could remember
9 that one instance. Sitting here right now, I can't
11:31 10 think of a single specific instance where I've done
11 that, and yet I know I have. So I don't think that it
12 would be at all worthwhile to call up Arista engineers
13 and say, where did line 1,417 come from? Did you write
14 that, or did you cut and paste it from somewhere else?
11:32 15 I don't know that anybody could answer such a question.

16 Q. And you haven't endeavored to answer those
17 questions of Arista though, correct?

18 MR. WONG: Objection, asked and answered.

19 A. Given that I think it would be a waste of time,
11:32 20 no I have not.

21 BY MR. HOLMES:

22 Q. But in a case -- you've read Dr. Almeroth's
23 Opening Report, right?

24 A. Yes.

11:32 25 Q. And you've reviewed the evidence that he cited

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1 in his report, correct?

2 A. To the extent that he cites to evidence I have,
3 yes.

4 Q. And I'm sure you recall there are a number of
5 public statements and internal statements from Arista
6 saying that they've copied Cisco, right?

7 MR. WONG: Objection, misstates the record.

8 A. I don't think those were the exact words. I've
9 definitely seen the word "copy," and I've definitely
10 seen the words "IOS," "Cisco," and "industry standard"
11 and other terms around that word copy," yes.

12 BY MR. HOLMES:

13 Q. Do you recall Dr. Almeroth citing to an Arista
14 executive who said they "slavishly copied Cisco"?

15 A. I believe you're referring to Dr. Dutta's audio
16 transcript where he uses the word "slavishly" and
17 "copied" in the same sentence, something like that, yes.

18 Q. You remember that?

19 A. I do.

20 Q. So in a case where Arista's CTO has said that
21 "Arista slavishly copied Cisco," you don't think that
22 gives a little bit of context or may suggest that
23 perhaps talking to Arista's engineers might be
24 worthwhile?

25 MR. WONG: Objection, misstates the record and

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1 is that I think about all these allegations and the
2 questions you're asking and so forth.

3 I'm sorry to add to an already long response,
4 but these are all my opinions, and I certainly intend to
11:53 5 offer these opinions at trial. But there may be more
6 opinions based on this help description thing that's
7 still pending, and I don't know if, when we get
8 discovery, I may be asked to opine further, I think if I
9 am that would be fair game to include as well. And I
11:53 10 certainly don't know what I would say or even what my
11 opinions will be around that, sitting here right now.

12 BY MR. HOLMES:

13 Q. Do you have any opinions about Cisco's
14 allegations of help description copying as you sit here
11:53 15 right now?

16 A. I gave you some of those earlier. My main
17 reaction is that I want there to be a lot more evidence
18 before I can even start to undertake an investigation as
19 to the merits of those allegations. I offer a few
11:54 20 cursory comments in my Rebuttal Report, having spent
21 probably 10 total minutes looking at the exhibit that
22 lists those help description strings. But I've had
23 nowhere near enough time to make even a rudimentary
24 assessment of the merits of those allegations.

11:54 25 Q. In formulating your opinions in this case, you

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1 performed -- I don't know if you want to call it testing
2 on certain Cisco and Arista products; is that fair?

3 MR. WONG: Objection, vague.

4 A. I certainly interacted with Cisco and Arista
11:54 5 products as part of the work I did, yes.

6 BY MR. HOLMES:

7 Q. And how long did you spend interacting with
8 Cisco products in formulating your opinions in this
9 case?

11:55 10 A. I mean to the extent that my interaction with
11 Cisco products reaches back decades, and that in some
12 sense, all of my experience with Cisco products helped
13 inform my opinions, because I think it was helpful that
14 I knew fundamental operation of Cisco products for a
11:55 15 long time. My experience with Arista is much more
16 recent. And so I don't know if you'd like me to sum up
17 every moment of experience on Cisco products going back
18 to my first experience, or if you want to talk about
19 deliberate interactions with Cisco products directed at
11:55 20 specific questions regarding a litigation?

21 Q. Well, my question was specifically, about how
22 many hours did you spend with Arista (sic) products to
23 formulate your opinions in this report -- in these
24 reports?

11:55 25 A. So I think you just changed to Arista in

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1 that question.

2 MR. HOLMES: I'm sorry, let me re-ask the
3 question then.

4 BY MR. HOLMES:

11:56 5 Q. How many hours did you spend interacting with
6 Cisco switches in order to formulate your opinions that
7 are in these two reports?

8 A. I'm sorry to be repetitive. Am I to exclude
9 interactions with Cisco products before I was engaged
11:56 10 with this litigation?

11 Q. Well, my question is just, whatever you relied
12 on to formulate your opinions in this case, if that
13 happened to be something you did previously, I would
14 like to hear that as well.

11:56 15 A. Okay. So when I first learned the basics of
16 the Cisco CLI a long time ago, I think I rely on that,
17 because I didn't have to relearn that to start my
18 investigations and to be able to have some facility in
19 my interactions with Cisco devices when I was retained
11:56 20 in this matter. And so I would count all of it. That
21 might be a stretch. Maybe there's some things I did
22 that really don't need to be done. But I would say, I
23 don't know, hundreds of hours if not more than a
24 thousand hours.

11:57 25 Q. And how much time did you spend interacting